IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 830 OF 2004

Govind Sakharam Attar
(since deceased through L.Rs) & Ors...Petitioners

Versus

Smt. Manda & Mandakini Ramchandra
Attar & Ors. ...Respondents

.....

Mr. Dilip Bodke, counsel for Petitioners

Mr. Tejas D. Deshmukh, counsel for Respondents.

.....

CORAM: B. H. MARLAPALLE, J.

DATED: 28TH FEBRUARY, 2005

P. C.:-

1. Heard Mr. Bodake, the learned counsel for the petitioners and Mr Deshmukh, the learned counsel for the respondents.

2. Rule.

3. Respondents waive service and by consent of the parties, rule is taken up for final hearing forthwith.

4. The respondent No.1 is the mother of respondent Nos. 2 to 4, they are the plaintiffs in Special Civil Suit No.741 of 2001 which has been filed in the

Court of the learned C.J.S.D. at Pune for partition of the immovable property i.e. the agricultural lands and the house. The total agricultural land admeasures 5 acres and 12 gunthas. In the said suit the plaintiffs filed an application for maintenance (Exh.72) and by the impugned order dated 25.6.2003 the learned IInd Jt. C.J.S.D. has granted maintenance at the rate of Rs.2000/- per month jointly and severally to plaintiffs from the date of application i.e. 13.11.2003 till the disposal of the suit.

5. It is evident from the pleadings of the respective parties, out of the total agricultural lands, one fourth share is already in the possession of the plaintiff No.1 and she claims the total half share in the land. Thus, the balance one fourth share is allegedly in the possession of the defendants, which would be about one acre and 10 gunthas. Even if it is presumed to be irrigated land, it would not generate the income of Rs.24,000/- per year that would be available at the disposal of the defendants after the investment that they would have made is deducted. It appears that the trial court proceeded on the basis that the entire land is in the possession of the defendants which is not so even on the basis of the averments made in the application at Exh.72. No doubt that the plaintiffs

are entitled for some maintenance to be paid by the defendants, but there is no justification for fixing the maintenance amount of Rs.2,000/- and in the impugned order the scanty reasons do not justify the payment of such an amount. It would be just and proper that the maintenance amount is fixed at Rs.1,000/- per month.

6. Hence, the petition succeeds partly and the impugned order is modified for payment of Rs.1,000/- per month as maintenance from the date of the application at Exh.72 i.e. 13.11.2002 till the disposal of the suit.

7. Rule made absolute accordingly with no order as to costs.

8. The amount deposited in this Court be transferred to the court below i.e. trial Court and the plaintiffs are at liberty to withdraw the same as per this modified order.

9. Writ to go forthwith to the trial Court.